

VIRGINIA CODE COMMISSION

Tuesday, September 16, 2014 - 10 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

MEMBERS PRESENT: John S. Edwards; Gregory D. Habeeb; Carlos L. Hopkins; Ryan T. McDougle; James M. LeMunyon; E.M. Miller, Jr.; Thomas M. Moncure; Christopher R. Nolen; Timothy G. Oksman

MEMBERS ABSENT: Robert L. Calhoun; Charles S. Sharp; Robert L. Tavenner

OTHERS PRESENT: Brian Kennedy, LexisNexis; Jeannine Rose, Department of Planning and Budget; Lieutenant Colonel Russell Woodlief, Virginia National Guard; Marilyn Harris, Department of Emergency Management; Elizabeth Hooper, Virginia Polytechnic Institute and State University; Frances Bradford, College of William and Mary

STAFF PRESENT: Jane Chaffin, Lilli Hausenfluck, Karen Perrine, Nicole Brenner, Ryan Brimmer, Jescey French, David May, Scott Meacham, Sarah Stanton, Tom Stevens, and Amigo Wade, Division of Legislative Services

Call to order: Senator Edwards called the meeting to order at 10:05 a.m.

Approval of minutes: Hearing no objection, Senator Edwards stated that the minutes of the July 21, 2014, meeting of the Code Commission stand approved as printed and distributed to the members of the Code Commission.

2015 Code of Virginia pricing and replacement volume proposal: Brian Kennedy, Director, Government Content, LexisNexis, explained that LexisNexis determines which volumes of the Code of Virginia to recommend to the Code Commission for replacement based on age and percentage. Historically, LexisNexis recommends four to six volumes for replacement each year, and the more volumes replaced, the lower the cost of the supplement. This year, the recommendation is to replace Volumes 2, 2A, 3B, 4A, 5B, and 10. The price increase is based on the Producer Price Index for Book Publishing, which is 4.5% from June 2013 to June 2014, rounded to the nearest quarter.

The Code Commission briefly discussed the advantages and disadvantages of a larger volume versus a larger supplement. Senator Edwards asked Mr. Kennedy to advise the Code Commission anytime the volume size becomes unwieldy and should be split into two volumes. Jane Chaffin advised that this year, all volumes with standalone supplements were replaced, except for Volume 2.

On motion of Senator McDougle, seconded by Mr. Oksman, the Code Commission approved the requested replacement of six volumes in 2015 as follows: Volumes 2 (Title 8.01), 2A (Titles 8.1-8.11), 3B (Titles 16.1-17.1), 4A (Title 19.2), 5B (Titles 29.1-32.1), and 10 (Tables). Mr. Nolen abstained from voting as LexisNexis is a client of his law firm.

On motion of Mr. Moncure, seconded by Mr. Miller, the Code Commission approved the requested price increase of 4.5%. Mr. Nolen again abstained from voting. The 2015 pricing is as follows:

	2015 Prices with Six Replacement Volumes	
	State	Private
Cumulative Supplements	\$166.50	\$215.25
Index	\$ 84.25	\$ 89.00
Replacement Volumes 2, 2A, 3B, 4A, 5B, and 10	\$271.50 (\$45.25 each)	\$339.00 (\$56.50 each)
Volume 11	\$ 34.25	\$ 45.25
Volume 11 Supplement	\$ 11.50	\$ 11.50
Advanced Code Service	N/A	\$ 68.50
TOTAL	\$568.00	\$768.50

43 **Proposed clean up bill to change "exemplary damages" to "punitive damages":** Delegate
44 Habeeb advised that the term "exemplary damages" or the phrase "punitive or exemplary
45 damages" is used in several places in the Code of Virginia. He explained that the courts have
46 determined that punitive damages and exemplary damages are the same, and it is confusing to
47 have both terms used in the Code. Delegate Habeeb suggests that the proposed bill, which
48 changes "exemplary damages" to "punitive damages," or a similar version be introduced at the
49 2015 Session of the General Assembly. Delegate Habeeb indicated that he had informally
50 contacted the Virginia Trial Lawyers Association and the Virginia Association of Defense
51 Attorneys regarding this proposal.

52 Mr. Miller moved, and Mr. Hopkins seconded, that (i) the Code Commission approve the
53 concept of the proposed legislation, (ii) Delegate Habeeb work with staff and interest groups to
54 finalize the bill draft, and (iii) a final version of the bill be presented to the Code Commission at
55 a future meeting. The Code Commission unanimously voted to approve the motion.

56 **Report on obsolete laws in Titles 21, 35.1, 36, 44, and 51.5:** David May, DLS Attorney,
57 introduced the item and explained that the division has implemented a new method for
58 identifying obsolete laws to recommend to the Code Commission for removal from the Code of
59 Virginia, as set forth in the handout titled "Report on Obsolete Laws." Also, the division has
60 developed a definition of "obsolete" as follows: "A statute or provision thereof may be 'obsolete'
61 if it has lost its efficacy without being repealed, including statutes or provisions that are outdated,
62 outmoded, unnecessary, superseded, no longer serve a useful purpose, or apply to an object or
63 occasion that no longer exists." Mr. May indicated that several division staff attorneys would
64 present statutes or provisions for consideration as possibly obsolete, and a report for each title is
65 included in the handouts.

66 In response to a question, Mr. May explained that the definition of "obsolete" was developed by
67 taking the best components from information from other states, dictionaries, and case law. The
68 Code Commission discussed the definition and did not recommend any changes.

69 Mr. May stated that no obsolete provisions were found in Titles 35.1 (Hotels, Restaurants,
70 Summer Camps, and Campgrounds) and 47.1 (Notaries and Out-Of-State Commissioners). Mr.
71 May then introduced Jescey French, DLS Senior Attorney, who presented the report for Title 44,
72 Military and Emergency Laws.

73 Ms. French introduced Lieutenant Colonel Woodlief, Virginia National Guard, and Marilyn
74 Harris, Virginia Department of Emergency Management, who assisted in preparing the report
75 and were available for questions.

76 Ms. French indicated that the recommendations under consideration would involve repealing and
77 amending numerous sections in Title 44 as well as amending sections in other titles of the Code.

78 In Chapters 1 and 2 of Title 44, the sections under consideration are §§ 44-3, 44-7, 44-21, 44-
79 24.1, 44-5 through 44-74, 44-119, 44-123, and 44-133. Other Code sections that impacted are
80 §§ 2.2-4905, 8.01-327.2, 18.2-308, 46.2-827, 65.2-101, and 65.2-103. Ms. French stated that
81 there are references throughout the title to the naval militia, but there has not been a naval militia
82 since the 1930s. The Code Commission agreed that provisions concerning the naval militia
83 should be repealed. There was no familiarity with the requirement of § 44-21 relating to bonds of
84 Adjutant General and his fiscal clerks, and the Code Commission discussed whether the section
85 was unnecessary as opposed to truly obsolete. Mr. Hopkins indicated he would review §§ 44-21
86 and report back to the Code Commission. Also, § 44-24.1, which authorizes the Adjutant
87 General to provide health coverage for employees appears to be obsolete since such coverage is
88 provided under either the state or federal systems.

89 Ms. French moved on from military provisions to emergency services and disaster provisions. In
90 Chapters 3.2, 4, and 7 of Title 44, the sections under consideration are §§ 44-146.25, 44-147
91 through 44-151, and 44-204 through 44-207. The Code Commission hesitated to repeal
92 provisions simply because they had not been used or to remove any specific power of the
93 Governor (for example, law giving the Governor the right to establish certain provisions
94 concerning air raids, even though the likelihood of an air raid is practically nonexistent). The
95 Commission discussed whether certain provisions contained policy questions and should be
96 updated rather than repealed.

97 Senator Edwards directed staff to prepare a bill for a subsequent meeting that repeals the
98 provisions regarding the naval militia and other provisions that are obsolete without question, but
99 to not include provisions regarding the governor's powers, which will be reviewed by the
100 Governor's Office and the Office of the Attorney General.

101 Amigo Wade presented the report for Title 36, Housing, and advised that the report includes the
102 input he received from the Virginia Housing Development Authority and the Department of
103 Housing and Community Development. Upon motion of Mr. Nolen, seconded by Mr. Moncure,
104 the Code Commission unanimously approved staff recommendations to (i) amend § 36-55.64 to
105 update a cross reference, (ii) amend §§ 36-78 and 36-83 to delete expired language, (iii) repeal
106 § 36-85.15 as unnecessary since severability is covered in Title 1, and (iv) amend § 36-85.17 to
107 remove language concerning staggered terms for board members.

108 Sarah Stanton presented the report on Title 51.5, Persons with Disabilities. Ms. Stanton stated
109 that much of this title was repealed two years ago as a result of government reorganization
110 legislation at which time the Department of Aging and Rehabilitative Services was created.
111 Therefore, the only section recommended for repeal is § 51.5-35.1, which states that references
112 in the Code of Virginia to the terms "Board for Rights of the Disabled" and "Board for the Rights
113 of Virginians with Disabilities" means "Virginia Board for People with Disabilities." Ms. Stanton
114 stated that there are no references to the two obsolete boards anywhere in the code and the
115 section was last amended in 1992. A question was raised whether a current dispute could involve
116 either term. Ms. Stanton was asked to contact the Board for People with Disabilities to confirm
117 that no pending issues concerning the two boards are outstanding. Delegate Habeeb moved, and

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118 Mr. Oksman seconded, that a bill be prepared to implement the recommendation in the report,
119 subject to staff findings. The motion passed unanimously.

120 Scott Meacham presented the report on Title 21, Drainage, Soil Conservation, Sanitation and
121 Public Facilities Districts. The sections under consideration are §§ 21-116.1, 21-120, 21-139, 21-
122 427, and 21-427.1, and either continue in effect or incorporate by reference various Acts of
123 Assembly. After discussion, the Code Commission instructed staff to review the underlying Acts
124 of Assembly to determine if truly obsolete. If not, then perhaps the act should be set out in the
125 Code of Virginia. Therefore, a decision on this report was deferred until next month's meeting
126 when "not set out" provisions in the Code of Virginia will be discussed.

127 After discussing whether the various obsolete law recommendations could be consolidated into
128 an omnibus bill, the Code Commission agreed that each title should be drafted in a separate bill.

129 **Severability provisions:** Nicole Brenner, DLS Attorney, explained that individual severability
130 provisions should not be included in the Code of Virginia because of a Title 1 blanket
131 severability provision that covers the entire Code. As part of the title revision process, staff
132 identifies and suggests the repeal of severability provisions. She further explained that she was
133 unsuccessful repealing certain severability provisions during the Title 33.1 recodification
134 because of arguments from certain interest groups that there is ambiguity by having provisions in
135 some places and not in others, which creates the false implication that chapters without
136 severability provisions are not severable. Ms. Brenner stated that she identified severability
137 provisions throughout the Code and drafted a proposed omnibus bill that removes the
138 severability provisions by repealing or amending sections, as appropriate. She is requesting the
139 Code Commission to consider introducing legislation at the 2015 Session of the General
140 Assembly to clean up the severability provisions throughout the Code. In response to a question
141 about DLS practice when a legislator requests inclusion of a severability clause, Ms. Brenner
142 stated that the DLS attorneys are not supposed to include such provisions in bill drafts; however,
143 the provisions are included if insisted upon by the requesting legislator. The Code Commission
144 suggested that if a legislator insists on including a severability provision, it should not be
145 assigned a code section number, but could be placed in a separate enactment clause as an
146 alternative.

147 Mr. Miller made a motion, seconded by Mr. Oksman, to approve the omnibus bill draft removing
148 certain severability provisions from the Code of Virginia. The motion passed by unanimous vote.

149 **Recodification of Title 23, Educational Institutions: Recodification of Title 23, Educational**
150 **Institutions:** Tom Stevens and Ryan Brimmer, DLS Attorneys, presented the recodification
151 report beginning with new Chapter 13 regarding provisions that apply generally to governing
152 boards of public institutions of higher education. The report is in the meeting materials under
153 Tab 5 (pages 1-137); the new Title 23.1 sections are not numbered so they will be referred to
154 only by description and line number.

155 Chapter 13 - Governing Boards

- 156 • Boards of visitors; membership terms and removal (lines 25-45). Mr. Stevens stated that
157 based on the Code Commission's directive at the July meeting, the work group met to revisit
158 the language regarding removal of a board member for failure to perform duties. The new
159 language is different substantively from the prior language, and links removal to failure to
160 attend meetings as the schools favored a mechanical process and an individual approach.

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161 (lines 33-35). The Code Commission discussed the new language and noted concerns about
162 the definition of "sufficient cause" in subsection B and the purpose of subsection E, clause
163 (ii), which requires a board of visitors to adopt a policy for making a recommendation to the
164 governor for removal of a member under subsection C (malfeasance, misfeasance, etc.). Mr.
165 Moncure reminded the Code Commission that the accrediting agencies for institutions of
166 higher education want the board member removal process to be as objective as possible, and
167 not politicized. Mr. Stevens stated that they would continue to work on the language in this
168 section.

169 • Boards of visitors; powers (lines 49-85): Mr. Stevens explained that this section centralizes
170 and standardizes the powers of the board of visitors of a four-year public institution of higher
171 education (institution). Subdivisions A 4 and 5 were moved from § 23-4.1 of the Code of
172 Virginia and subdivisions A 6, 8, 10, 12, 13, and 14 were moved from § 23-9.2:3 of the Code
173 of Virginia. The work group agreed that these powers should apply to all institutions.

174 Chapters 14 through 28: Mr. Stevens indicated that Chapters 14 through 28 each concern a
175 specific institution. A common provision for most of the institutions provides the institution with
176 corporate powers. Using the section "Corporate name; name of university" (lines 94-107) in
177 Chapter 14 (Christopher Newport University) as an example, Mr. Stevens explained that the
178 concept of corporate powers originally came from the University of Virginia's enabling law in
179 1908. Since that time, corporate powers in Title 13.1 of the Code of Virginia have grown, and
180 staff recommends that the corporate powers of institutions be limited to those of a nonstock
181 corporation. Mr. Stevens indicated that the work group is still reviewing this issue, and the
182 institutions are supposed to identify which corporate powers they need.

183 Mr. Brimmer reviewed certain sections in Chapters 14 through 28, as follows:

184 Old Dominion University

185 • §§ 23-49.22:1 through 23-49.22:4 - Center for Graduate and Undergraduate Studies (lines
186 962-999).

187 Staff recommends repealing these sections, and the university concurs.

188 University of Virginia

- 189 • § 23-62 - University continued (lines 1117-1118)
190 • § 23-78 - Testimonials to students (lines 1275-1278)

191 Staff recommends repealing §§ 23-62 and 23-78, and the university concurs.

192 • Article 10 (§ 23-91.23:1) - Branch Campus in Qatar (lines 1331-1355)

193 Since the university never established a branch campus in Qatar in 15 years, it is comfortable
194 with repealing the language.

195 Virginia Commonwealth University

196 • § 23-50.15 - Virginia Center on Aging (lines 1912-1913)

197 This section currently reads "Chapter 170 of the Acts of 1978, relating to the Virginia Center on
198 Aging at Virginia Commonwealth University, is incorporated in this Code by reference." Staff
199 recommends repealing this sentence and setting out the act in full in the section.

200 Virginia Military Institute

- 201 • § 23-110 - Conferring of degrees (lines 2247-2252)

202 Staff recommends repealing this section, and the institute concurs as this power is covered by the
203 general authority. Mr. Hopkins noted that this section empowers the Governor and the board to
204 confer a degree and requested that staff determine why the Governor was included in this section
205 before it is repealed.

206 Virginia Polytechnic Institute and State University

- 207 • § 23-122.1 - Investment of endowment funds, endowment income, and gifts; standard of
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- 208 care; liability; exemption from the Virginia Public Procurement Act (lines 2419-2459).

209 Staff recommends repealing § 23-122.1 as its contents are included in proposed Chapter 10 of
210 Title 23.1.

- 211 • Articles 2.1 -Roanoke Technical Institute (§§ 23-135.8 through 23-135.10; lines 3048-3076)
212 • Article 2.2 - Clifton Forge Covington Branch (§§ 23-135.12 through 23-135.16; lines 3078-
213 3115)
214 • Article 2.3 - Wytheville Branch (§§ 23-135.17 through 23-135.21; lines 3117-3155)
215 • Article 4 - Nautical School (§§ 23-142 through 23-146; lines 3221-3270)

216 Staff recommends repealing these articles because these entities no longer exist. The university
217 has no objection, but indicated it would like to research the issue further.

218 College of William and Mary

- 219 • § 23-49 - Students (lines 3582-3584)

220 Staff recommends repealing this section, which states, "The College shall admit properly
221 prepared men and women to its courses, and upon completion of the requirements shall grant
222 them degrees." The college has no objection to repealing this section. Delegate Habeeb inquired
223 about the history of the section and asked staff to conduct additional research to find out if this
224 section is necessary for the college to remain coeducational.

- 225 • Richard Bland College (line 3601)

226 Staff recommends replacing "designate" with "appoint" to read, "The board shall appoint a chief
227 executive officer of Richard Bland College."

228 **2014 VAC replacement volumes:** Mrs. Perrine advised the Code Commission that its approval
229 is needed when West replaces more than four volumes of the administrative code in any given
230 year. This year, West is recommending issuing five volumes, each consisting of approximately
231 1,600 pages, as follows, due mainly to the size of Title 9 (Environment):

- 232 • Volume 5: Titles 5 - 7 & part of Title 8 (8VAC20-10 - 8VAC20-131)
233 • Volume 6: part of Title 8 & part of Title 9 (8VAC20-140 - 9VAC5-60)
234 • Volume 7: part of Title 9 (9VAC5-70 - 9VAC5-20-120)
235 • Volume 8: part of Title 9 (9VAC20-130 - 9VAC25-640)
236 • Volume 9: part of Title 9 (9VAC25-640 - 9VAC25-890)

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237 Mr. Miller made a motion, which was properly seconded, to replace the five volumes as
238 proposed. The motion was approved.

239 Mrs. Perrine also mentioned that although West had requested approval to replace five volumes
240 last year, West was able to fit that material into four appropriately sized volumes and reduce the
241 print price impact on customers.

242 **Other business** Jane Chaffin advised the Code Commission that the social media was being used
243 to make the Virginia Register more visible. She encouraged members with Twitter accounts to
244 follow the Virginia Register @Varegs.

245 **Public comment; adjournment:** The Chair opened the floor for public comment. As there was
246 no public comment and no further business to discuss, the Chair adjourned the meeting at
247 12:13 p.m.